

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE RIVERMEADOWS
ASSOCIATES, LTD., a California
Limited Partnership,

Debtor.

BAP No. WY-97-011

RIVERMEADOWS ASSOCIATES,
LTD., a California Limited
Partnership,

Appellant,

v.

THOMAS M. FALCEY, Trustee; and
COUNTRYSIDE, LLC,

Appellees.

Bankr. No. 95-20322
Chapter 11

ORDER TRANSFERRING APPEAL
TO DISTRICT COURT
March 19, 1997

Before McFEELEY, Chief Judge, and BOHANON and ROBINSON, Bankruptcy
Judges.

Two matters are before the Court. First is the Election to Have Bankruptcy Appeal Heard in United States District Court for District of Wyoming, filed by the attorneys for Thomas Falcey ("Trustee"), the Chapter 11 Trustee and one of the appellees in this appeal. The second is the Election to Have Bankruptcy Appeal Heard in United States District Court, filed by the attorneys for Countryside, L.L.C. ("Countryside"), another appellee in this appeal.

The statute setting forth the jurisdiction of the BAP states that:

[E]ach appeal . . . shall be heard by a 3-judge panel of the
bankruptcy appellate panel service . . . unless--
(A) the appellant elects at the time of filing the appeal; or
(B) any other party elects, not later than 30 days after service of
notice of the appeal;
to have such appeal heard by the district court.

28 U.S.C. § 158(c)(1). Local Rule 8001-1 echoes this provision, but with an addition:

Any other party electing to have the appeal heard in the district court must serve and file a separate pleading clearly stating the election no later than 30 days after service of the notice of appeal. . . . Any appellee filing a paper other than a docketing statement, see section (d) of this rule, waives the time remaining in the thirty-day period to elect to have the appeal heard in district court.

10th Cir. BAP L.R. 8001-1(e) (emphasis added). Both elections were filed after the Trustee and Countryside had filed Entry of Appearance and Certificate of Interested Parties forms. The issue before the Court is whether the Trustee and Countryside have waived their right to elect to proceed before the District Court.

We conclude that these elections should be granted. All parties are required to file an Entry of Appearance and Certificate of Interested Parties within ten days after the date the notice of appeal is served. 10th Cir. BAP L.R. 8001-2(a). If the filing of this mandatory document constituted a waiver of the time remaining to file an election, the Local Rule would effectively amend 28 U.S.C. § 158(c)(1)(B) to allow appellees only 10 days to elect to proceed before the District Court. Such a broad-sweeping change is beyond the authority of the local rules. Fed. R. Bankr. P. 8018(a)(1).

We note that Local Rule 8001-1(e) already manifests an intent to allow parties to file mandatory documents without waiving the time to make an election. See 10th Cir. BAP L.R. 8001-1(e) (excepting docketing statements from the rule). We therefore hold that the waiver provisions of 10th Cir. BAP L.R. 8001-1(e) do not apply when a party files documents that it is required to file by either our Local Rules or by the Federal Rules of Bankruptcy Procedure.

We do not reach the issue of whether the waiver provisions of 10th Cir. BAP L.R. 8001-1(e) may be enforced as to other documents.

Based on the pleadings and documents filed in this case, and for good cause shown, it is HEREBY ORDERED THAT:

(1) The elections by the Trustee and Countryside are GRANTED.

- (2) This appeal is ordered transferred to the United States District Court for the District of Wyoming.
- (3) Pending completion of the record, the case file is transmitted to the U.S. Bankruptcy Court Clerk's Office. It is requested that the bankruptcy court acknowledge receipt of the case file listed above by returning one copy of this order, signed in the space indicated below.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By:

Deputy Clerk

Please acknowledge receipt of the case file listed above.

Dated: _____

Signed: _____
Bankruptcy Court Deputy Clerk